

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DOCKETED COMPLAINT NO.
05-016KELLY CLAUDE SPELL
TX-1322624-R**FINAL AGREED ORDER**

On this the 8th day of May, 2007, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of Kelly Claude Spell, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

1. Respondent Kelly Claude Spell is a state certified residential real estate appraiser, holds certification number TX-1322624-R, and held this certification during all times material to the factual and legal conclusions outlined in the order.

2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE ' 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE ' ' 153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

3. On or about October 8th, 2002, the Respondent appraised the subject property located at 310 W. College Street, Terrell, Kaufman County, Texas, for the client, GCM Mortgage of Terrell, Texas.

4. On or about September 7th, 2004, the Complainant, Jack McComb, filed a staff-initiated complaint based upon a referral from Fannie Mae which complained that the Respondent's appraisal report contained potential violations of USPAP.

5. On or about October 15th, 2004, the Board, in accordance with the mandate of the Texas Appraiser Licensing and Certification Act and Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. Chapter 2001, notified Respondent of the nature and accusations involved and Respondent was afforded an opportunity to respond to the accusations alleged by the Complainant. Respondent's response was received.

6. On November 14th, 2006, Respondent appeared at an Informal Conference in response to an invitation from the Enforcement Division of the Board. The Board was represented at the Informal Conference by Jack McComb, and Jeff Strawmyer, investigators with the Board and Troy Beaulieu, attorney for the Board. Respondent was represented at the conference by Trey Blocker, an attorney with Jackson Walker, LLP.

7. The Enforcement Division has concluded that the Respondent's appraisal report violated the Act, the Rules of the Board, and USPAP by the following acts or omissions:

- a. Inadequate site and improvements identification, description and reporting;
- b. Inadequate highest and best use analysis;
- c. Inadequate site valuation technique;
- d. Insufficiencies and errors in cost approach analysis;
- e. Insufficiencies and errors in sales comparison approach analysis;
- f. Lack of sufficient income approach analysis;

CONCLUSIONS OF LAW

The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE §§ 1103.451–1103.5535 (Vernon 2005).

1. Respondent violated various provisions of USPAP Standards 1 and 2 as prohibited by 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a);

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent:

- a) Pay to the Board an Administrative Penalty of \$1,000.00;
- b) Attend and complete a minimum, 15 classroom-hour course in USPAP;
- c) Attend and complete a minimum, 15 classroom-hour course in Highest and Best Use;

- d) Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- e) Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach / Market Data Analysis; and,
- f) Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed within **TWENTY DAYS** of the date of this Agreed Final Order. Failure to pay the administrative penalty within the time allotted shall result in **IMMEDIATE SUSPENSION** of Respondent's certification pursuant to notice to Respondent from the Board indicating that Respondent has not paid the administrative penalty.

ALL CLASSES required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. All classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Failure to complete the education required by this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the educational requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension or lifting of probation by certified mail, return receipt requested, to the last known address as provided to the Board. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent pays the Administrative Penalty or takes and passes the required educational courses and provides adequate documentation of same to the Board.

Respondent specifically denies the truth of the allegations set forth above and retains the right to controvert in any subsequent proceeding by the Board or Attorney General for the purposes of enforcing this Board Order, the validity of the allegations, facts or determinations contained in the Board Order; however, Respondent consents to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.

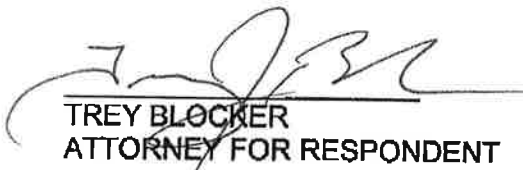
Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site. Any publication of this Board Order in the Board's Newsletter, website or otherwise shall include a statement that Respondent denied the truth of the allegations of the Board.

This Board Order shall not be admissible against Respondent in any civil proceeding, except for a proceeding which is brought by the Board or Attorney General to either (1) enforce the terms of this Board Order, or (2) pursue violations of the Act.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 8th day of May, 2007.

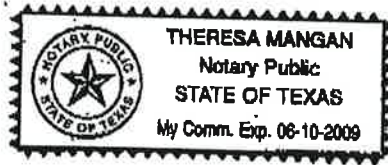

KELLY CLAUDE SPELL


TREY BLOCKER
ATTORNEY FOR RESPONDENT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 8th day of May, 2007, by KELLY CLAUDE SPELL, to certify which, witness my hand and official seal.


Notary Public Signature

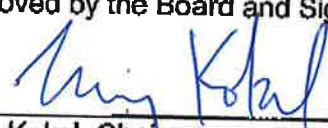
Theresa Mangan
Notary Public's Printed Name



Signed by the Commissioner this 16th day of May, 2007.


Wayne Thorburn, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 11 day of May, 2007.


Larry Kokel, Chairperson
Texas Appraiser Licensing and Certification Board